Supreme Court, U.S.
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No. 01-1723

In The
Supreme Court of the United States

LARRY BECKER, et al.,

Petitioners,

v.

MACK TRUCKS, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

I. Whether an employer violates section 510 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1140, by refusing to hire former employees because their employment would have an adverse effect on the employer's pension funding liability?

II. Whether this Court's decision in *Inter-Modal Rail Employees Ass'n v. Atchinson, Topeka and Santa Fe Railroad*, 520 U.S. 510 (1997), alters the ERISA standing requirement set forth in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989), that a former employee must have a colorable claim to vested benefits in order to have standing to bring an ERISA action?

LIST OF PARTIES TO THE PROCEEDING IN THE COURT BELOW

The named petitioners are identified in the petition for writ of certiorari.

Mack Trucks, Inc. is a wholly owned subsidiary of AB Volvo, a Swedish corporation publicly traded in the United States.

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STATUTORY PROVISIONS INVOLVED

Section 510 of the Employee Retirement Income Security Act provides, in relevant part:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act.

29 U.S.C. § 1140.

SUMMARY OF THE ARGUMENT

This Honorable Court should deny the petition for a writ of certiorari because the decision of the United States Court of Appeals for the Third Circuit does not meet any of the criteria for the granting of a petition set forth in the Rules of the Supreme Court of the United States.

This action arises under section 510 of ERISA, 29 U.S.C. § 1140 ("ERISA § 510"). The issue central to the case, whether an employer may refuse to hire former employees because of the adverse effect such employment would have on the employer's pension funding liability, is a narrow one, having arisen only twice in the history of the statute. As both occasions arose in Pennsylvania, there is no conflict among the courts of appeals on the point. The petitioners' assertion that the decision of the Third Circuit

here conflicts with *Heimann v. Nat'l Elevator Indus. Pension Fund*, 187 F.3d 493 (5th Cir. 1999), and *Mattei v. Mattei*, 126 F.3d 794 (6th Cir. 1997), on the question of whether a detriment to an employment relationship is necessary to a violation of ERISA § 510 is incorrect. In *Heimann* and *Mattei*, the courts applied ERISA § 510 to protect rights of the plaintiffs that had arisen out of pre-existing employment relationships. *Heimann*, 187 F.3d at 504; *Mattei*, 126 F.3d at 799. The Third Circuit here declined to apply ERISA § 510 in favor of plaintiffs whose benefits earned during a pre-existing employment relationship were not threatened, but who sought to create a new employment relationship and earn new benefits. Accordingly, the Third Circuit correctly distinguished *Heimann* and *Mattei*. *Becker v. Mack Trucks, Inc.*, 281 F.3d 372, 383 n.10 (3d Cir. 2002).

As to whether non-vested former employees have standing to bring an action under ERISA § 510, the lower court relied upon this Court's clear guidance in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989), to hold that the non-vested former employees do not have standing. *Inter-Modal Rail Employees Ass'n v. Atchinson, Topeka and Santa Fe R.R.*, 520 U.S. 510 (1997), addresses only whether ERISA § 510 applies to welfare benefit plans and does not undercut the holding in *Firestone* or its applicability in this case.

REASONS FOR DENYING THE WRIT

I. THE HOLDING OF THE THIRD CIRCUIT COURT OF APPEALS THAT AN EMPLOYER MAY LAWFULLY REFUSE TO HIRE FORMER EMPLOYEES BECAUSE OF THE ADVERSE EFFECT OF THEIR EMPLOYMENT ON THE EMPLOYER'S PENSION FUNDING LIABILITY DOES NOT CREATE A CONFLICT AMONG THE CIRCUITS OR OTHERWISE RAISE A SIGNIFICANT ENFORCEMENT ISSUE UNDER ERISA.

This case presents a single narrow legal question: whether ERISA § 510 requires that an employer who is seeking to hire entry-level employees ignore the adverse financial effect of hiring job applicants who had previously worked for the employer and thus had prior credited service under the employer's pension plan.

This question has arisen only twice in the reported case law: in the present case, and in *Shawley v. Bethlehem Steel Corp.*, 784 F. Supp. 1200 (W.D. Pa. 1992), *aff'd on other grounds*, 989 F.2d 652 (3d Cir. 1993). The Third Circuit's decision here is consistent with the district court's decision in *Shawley*. No other court of appeals has addressed this discrete issue. For this Court to take up a question that has arisen only twice – both times in the same state – since passage of the statute in 1974, seems an injudicious use of the Court's limited resources.

The petitioners strain to articulate a conflict between the circuits, a traditional basis on which this Court grants writs, *see, e.g.*, S. Ct. R. 10. To do so, petitioners claim that one narrow aspect of the Third Circuit's opinion, which was not the primary basis for the court's decision, conflicts

with ERISA decisions from the Fifth and Sixth Circuits that are widely divergent on their facts. Petitioners argue that the Third, Seventh, and Tenth Circuits have held that the phrase "discriminate against" in ERISA § 510 presupposes an employment relationship, whereas the Fifth and Sixth Circuits construe ERISA § 510 without regard to the existence of an employment relationship. *Becker v. Mack Trucks, Inc.*, 281 F.3d 372; *Heimann v. Nat'l Elevator*, 187 F.3d at 507; *Mattei v. Mattei*, 126 F.3d at 804; *Lindenmann v. Mobil Oil Corp.*, 141 F.3d 290, 295 (7th Cir. 1998); *Anderson v. Chrysler Corp.*, 99 F.3d 846, 856 (7th Cir. 1996); *Teumer v. General Motors Corp.*, 34 F.3d 542, 544 (7th Cir. 1994); *Deeming v. American Standard, Inc.*, 905 F.2d 1124, 1127 (7th Cir. 1990); *Woolsey v. Marion Labs., Inc.*, 934 F.2d 1452, 1461 (10th Cir. 1991).

The primary bases for the Third Circuit's decision below were ERISA's explicit statutory language and ERISA's remedial objective. Whether detrimental effect upon the employment relationship is a necessary prerequisite to an ERISA § 510 claim is not central to the decision. Moreover, while the Third, Fifth, and Sixth Circuits may have employed divergent reasoning in support of their construction of ERISA § 510, all three courts recognized and gave meaning to ERISA's overriding remedial objective and ERISA § 510's special role in ERISA's remedial scheme; *that is*, Congress's intention to secure participants' and beneficiaries' settled expectations of receiving promised benefits through funding, fiduciary, disclosure and other requirements, and by prohibiting discriminatory interference with ERISA's "protected rights." *Becker*, 281 F.3d 372; *Heimann*, 187 F.3d 493; *Mattei*, 126 F.3d 794. Because there is no conflict among the circuits on this point and because the case does not otherwise present a

significant ERISA enforcement issue, granting the petition for a writ of certiorari is not appropriate.

A. No Conflict Exists Because The Primary Bases For The Third Circuit's Decision Are The Statutory Language And The Statutory Enforcement Scheme, And Not The Lack Of A Detriment To An Employment Relationship.

The Third Circuit's decision that an employer may refuse to hire job applicants who are former employees focused on "the explicit statutory language and the structure and purpose of the statute." App. 13a (quoting *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 138 (1990)). First, the court correctly noted that "[t]he plain language of § 510 omits a refusal to 'rehire,' 'hire,' or to take any action related to hiring from its enumeration of prohibited acts." *Id.* at 14a. The court observed that, in numerous statutes enacted over many years, Congressional drafters who sought to protect employees from discriminatory hiring practices did so explicitly. *Id.* at 15a-16a. The court accordingly concluded that the omission in ERISA § 510 of such protection must have been intentional. *Id.* at 16a. The Third Circuit rejected the petitioners' invitation to construe the term "discriminate" in ERISA § 510 expansively because of this intentional omission of the phrase "refusal to hire." *Id.* at 14a. This holding does not conflict with any decision of any court at any level.

The Third Circuit found further support for its holding in ERISA's statutory purpose and overall regulatory scheme, noting that the purpose of the statute is "to protect benefits promised to an employee arising from a pre-existing employment relationship." *Id.* at 16a-17a.

The role of ERISA § 510 within the overall regulatory scheme is to make the promises of employee welfare and pension benefits credible by preventing employers from discharging or harassing their employees to prevent them from obtaining promised benefits. The Third Circuit cited this Court's decisions in *Ingersoll-Rand Co. v. McClendon*, 498 U.S. at 143 and *Inter-Modal Rail Employees Ass'n*, 520 at 515, as well as its own decision in *Gavalik v. Continental Can Co.*, 812 F.2d 834, 851 (3d Cir. 1987), and the decisions of the Seventh and Sixth Circuits, *Heath v. Varity Corp.*, 71 F.3d 256, 258 (7th Cir. 1995), and *West v. Butler*, 621 F.2d 240, 243 (6th Cir. 1980), in support of this well-established proposition. App. 17a-18a. Because a refusal to hire does not implicate benefits promised over the course of an employment relationship, it falls outside the statutory purpose as well as outside the language of ERISA § 510. The Third Circuit concluded:

> Unlike a discharge or other workplace harassment, a failure to hire does not amount to circumvention of promised benefits because job applicants who have yet to be hired have not been promised any benefits.

App. 19a. As noted above, this is not a proposition as to which the courts of appeals disagree.

When discussing ERISA's statutory purpose of protecting benefits promised over the course of an employment relationship, the Third Circuit observed that the broad array of safeguards put in place by Congress did not extend to job applicants because job applicants have not yet been promised any benefits. Thus, the Third Circuit looked to its prior decisions in *Haberern v. Kaupp Vascular Surgeons Ltd.*, 24 F.3d 1491, 1503 (3d Cir. 1994), and *Fischer v. Philadelphia Elec. Co.*, 96 F.3d 1533, 1543 (3d

Cir. 1996), and to the Seventh and Tenth Circuits' decisions in *Andersen v. Chrysler Corp.*, 99 F.3d 846, 856 (7th Cir. 1996), and *Woolsey v. Marion Labs., Inc.*, 934 F.2d 1452, 1461 (10th Cir. 1991), to support its conclusion that the term "discriminate" in ERISA § 510 "by no means suggests, however, that [Congress] intended to regulate action taken against a potential employee." App. 19a-20a.

Petitioners pounced upon the obvious fact that job applicants have no employment relationship to support their theory that the circuits are in conflict over the necessity of a disruption to the employment relationship for an ERISA § 510 claim. Contrary to the petitioners' claims, however, the Third Circuit's decision was driven by the undeniable reality that job applicants have no settled expectation of promised benefits – and therefore nothing for ERISA § 510 to protect – not by any requirement that the employer's conduct must be disruptive of an employment relationship. Accordingly, petitioners' request for a writ of certiorari is premised on a flawed interpretation of the Third Circuit's holding and should be denied.

B. No Conflict Exists Because The Third, Fifth And Sixth Circuit Decisions Are All Driven By ERISA's Fundamental Objective Of Securing Promised Benefits And Enforcing Protected Rights.

Heimann v. Nat'l Elevator Indus. Pension Fund, 187 F.3d 493 (5th Cir. 1999), *Mattei v. Mattei*, 126 F.3d 794 (6th Cir. 1997), and the Third Circuit's decision in this case are grounded on ERISA's fundamental statutory objective: the protection of participants' and beneficiaries' settled expectations of receiving promised benefits. In *Heimann* and *Mattei*, the plaintiffs had "protected rights"

arising out of pre-existing employment relationships that included participation in employer pension and welfare benefit plans. In the present case, the petitioners had no protected rights because they were mere "potential" employees who participated in nothing. App. 19a.

While a right to benefits arises only when an employer promises such benefits to an employee as part of the employment relationship, the right to receive those benefits may continue beyond the life of the employment relationship. Thus, as the Third Circuit recognized, job applicants must first have an employment relationship before a right to benefits is protected by ERISA, but as the Fifth and Sixth Circuits also recognized, after rights have arisen by virtue of an employment relationship, ERISA § 510 protects those rights even after the employment relationship ends. App. 20a; *Heimann v. Nat'l Elevator Indus. Pension Fund*, 187 F.3d 493, 507 (5th Cir. 1999); *Mattei v. Mattei*, 126 F.3d 794, 804 (6th Cir. 1997). It is not surprising, then, that the Fifth and Sixth Circuits applied ERISA § 510 to protect settled expectations that had arisen out of an employment relationship, whereas the Third Circuit refused to apply ERISA § 510 where no employment relationship yet existed.

Heimann involved a life-long union member who participated in multiemployer pension and health plans. *Heimann*, 187 F.3d at 498. When he retired, he and his wife began to receive pension benefits and retiree medical benefits. *Id.* Heimann later accepted a non-union management job. *Id.* A union official then informed the fund trustees that Heimann was working in "disqualifying employment" – though he was not – and demanded that the trustees suspend the Heimanns' benefits. *Id.* The trustees acquiesced. *Id.* at 498-99. The Heimanns filed

federal and state actions, claiming wrongful denial of pension and medical benefits and interference with Heimann's right under the plans to engage in non-disqualifying employment. *Id.* After the trial court dismissed all of the Heimanns' causes of action, the parties settled the Heimanns' claims for benefits under the plans. *Id.* The Fifth Circuit then considered whether the union official's intentional and malicious act of inducing the trustees to suspend the Heimanns' benefits was an ERISA § 510 violation. *Id.*

At the outset, the Fifth Circuit recognized that, as a "participant" and a "beneficiary," Mr. and Mrs. Heimann had "protected rights" to the pension and retiree medical benefits Mr. Heimann had earned through his employment. *Heimann*, 187 F.3d at 504. Unlike the petitioners here, who seek protection as job applicants who could earn additional benefits in prospective employment if hired, the plaintiffs in *Heimann* had a settled expectation of receiving benefits, having been promised those benefits during many years of employment. Unlike the Third Circuit, the Fifth Circuit did not decide whether the Heimanns had "protected rights" under ERISA in the absence of any employment relationship. Rather, the "protected rights" had arisen indisputably from his lifelong employment. *Heimann*, 187 F.3d at 507-09.

In deciding whether the conduct of the union official and the trustees was discriminatory interference with the Heimanns' ERISA "protected rights" in violation of ERISA § 510, the Fifth Circuit, like the Third Circuit, looked to the fundamental protections offered by ERISA and enforced in part through ERISA § 510. The Fifth Circuit stated:

> ERISA's basic purpose is 'to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare plans.' S. REP, No. 93-127. *See also,* H.R. REP, No. 95-533, stating that the 'primary purpose of the bill is the protection of individual pension rights[.].'

Heimann, 187 F.3d at 508. Having recognized ERISA's fundamental statutory objective, the court concluded that construing the term "discriminate" in ERISA § 510 as inclusive of the union official's conduct against the former employee and his beneficiary (even though the union official's conduct had no detriment on a current employment relationship) served that remedial objective of protecting settled expectations of receiving promised benefits. The court stated:

> ERISA's basic purposes, plain words and legislative history require a reading of section 510 and 502(a)(3) that provides all participants and beneficiaries, including former employees, former union members, and retirees with a remedy for economic retaliation because of participants' and beneficiaries' exercise of pension plan rights.

Id. at 508. Further,

> In the present case, it is not only more consistent with the broader context of ERISA and the primary purpose of ERISA § 510, but also explicitly required by the definitions of 'participant' and 'person' in [ERISA §3(7) and (9)], that we hold that former employee-participants are protected from economic retaliation by their former unions or employee organization and their former

> employers under § 510 for exercising their rights under the plans, ERISA and other laws.

Id. at 506.

The Fifth Circuit's decision in *Heimann* is consistent with the Third Circuit's observation that ERISA was intended to "safeguard employees' expectations with regard to promised benefits." App. 17a. As the Third Circuit pointed out, the Heimanns' "protected rights" arose out of a "pre-existing employment relationship." App. 20a. The Fifth Circuit simply applied ERISA § 510 to protect those rights. This result is not inconsistent with the Third Circuit's refusal to permit job applicants seeking additional "protected benefits" in prospective employment to invoke the protection of ERISA § 510.

Mattei was a dispute between the widow of a deceased participant and the executor of the participant's estate. *Mattei v. Mattei*, 126 F.3d 794, 796 (6th Cir. 1997). Prior to her marriage to the participant, the widow had executed an antenuptial agreement in which she released all claims to the participant's estate in exchange for a fixed weekly payment from the estate for the remainder of the widow's life. *Id.* Prior to his death, the participant was covered by a pension plan at his place of employment. *Id.* When the participant died, the plan administrator determined that the widow, as the participant's beneficiary, was entitled to the death benefit provided under the plan, notwithstanding the executor's claim to the contrary. *Id.* After the plan paid the widow a lump sum death benefit, the executor terminated the estate's weekly payments that were payable to the widow under the antenuptial agreement. *Id.* The widow sued the executor under ERISA § 510, claiming that the termination of her weekly payments retaliated

against her for asserting her claim to the death benefit to which she was entitled under the plan. *Id.* at 796-97.

Again, at the outset, the Sixth Circuit recognized that the widow, as the deceased participant's beneficiary, had a "protected right" under ERISA to receive the death benefit. *Mattei*, 126 F.3d at 796 n.2. Thus, unlike the petitioners here who seek protection as job applicants, but like the Heimanns who relied on promises of benefits made during Mr. Heimann's years of employment, the widow had a settled expectation of receiving the death benefit based on her husband's prior employment. Like the Fifth Circuit in *Heimann*, the Sixth Circuit did not address whether the widow had a "protected right" under ERISA in the absence of an employment relationship, because the decedent's prior employment relationship gave rise to the "protected right" at issue in the case.

Having recognized that the widow had a "protected right," the Sixth Circuit instead addressed several other questions, including whether, in the absence of a detriment to an employment relationship, the estate's termination of the widow's weekly payments under the antenuptial agreement was discriminatory interference with the widow's "protected rights" in violation of ERISA § 510. The Sixth Circuit, like the Third Circuit here and the Fifth Circuit in *Heimann*, looked to the fundamental protections offered by ERISA. The Sixth Circuit stated:

> The overarching goal of the statute was to protect rights conferred by an employee benefit plan .... [The committee report ... evinced Congress's desire for section 510 to protect pension rights and expectations from 'economic sanctions' – a broad description not limited to the sphere of employment ...

Mattei, 126 F.3d at 799. The Sixth Circuit then held that the estate's action was discriminatory interference with the widow's right to receive the death benefit.

The Sixth Circuit's decision in *Mattei* is not inconsistent with the Third Circuit's decision in this case. The *Mattei* widow had a settled expectation under the plan that she would receive a death benefit that had been promised her deceased husband during his employment. The estate's suspension of the antenuptial agreement payments interfered with the widow's settled expectation of receiving the death benefit earned by her deceased spouse during his prior employment. As the Third Circuit also pointed out in the present action, quite unlike the job applicants who sought protection of benefits that would arise in prospective employment, the widow's rights stemmed from a "pre-existing employment relationship." *Mattei*, 126 F.3d at 806.

II. THE DECISION OF THE COURT OF APPEALS THAT THE NON-VESTED PLAINTIFFS DO NOT HAVE STANDING TO ASSERT A CLAIM UNDER ERISA SECTION 510 IS CONSISTENT WITH THIS COURT'S DECISION IN *FIRESTONE TIRE & RUBBER CO. V. BRUCH* AND IS NOT CONTRARY TO THIS COURT'S DECISION IN *INTER-MODAL*.

The seventy-eight plaintiffs in this action fall into two categories: first, a group whose credited service had vested before they terminated employment; and second, a group whose credited service was not vested because they terminated employment before satisfying the plan's vesting requirement. Applying the standard established by this Court in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989), the lower court correctly determined that the non-vested plaintiffs were not "participants" within the

meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), and as a result, did not have standing to assert their ERISA § 510 claim. Under *Firestone,* a claimant is a "participant" if he has a colorable claim to vested benefits. *Id.* at 117. The lower court ruled that the non-vested plaintiffs' non-vested credited service (albeit nonforfeitable credited service) merely gave rise to a contingent claim for future benefits that did not meet *Firestone's* standard for "participant" status. *Id.* at 117-19.

Contrary to the petitioners' assertion, this Court's decision in *Inter-Modal Rail Employees Ass'n v. Atchinson, Topeka, and Santa Fe R.R.,* 520 U.S. 510 (1997), does not establish a new standard for determining "participant" status under ERISA § 3(7), and thus does not address the threshold question of standing to bring any type of ERISA claim, including an ERISA § 510 claim.[1] This Court's decision in *Inter-Modal* addressed the merits of the *Inter-Modal's* plaintiffs' ERISA § 510 claim, holding that ERISA § 510's protections extend to both pension plan benefits that vest and welfare plan benefits that ordinarily do not vest. *Inter-Modal* did not speak to the categories of claimants who may be "participants" under ERISA § 3(7) and

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[1] In fact, contrary to the petitioners' assertion, Pet. For Writ of Cert. at 15-16, neither the Ninth Circuit nor this Court addressed whether the *Inter-Modal* plaintiffs had standing as "participants" to assert an ERISA claim. Rather, since the *Inter-Modal* plaintiffs clearly had standing as "participants," both courts focused on whether the plaintiffs' claim of interference with ERISA protected rights was actionable under ERISA § 510. The Ninth Circuit held that the plaintiffs' claim of interference with welfare benefits was not actionable because those benefits were not vested, and this Court reversed, holding that rights to non-vested welfare benefits are protected by ERISA § 510.

thus have standing to bring an ERISA claim, including an ERISA § 510 claim.

Inter-Modal, thus, does not disturb this Court's decision in *Firestone.* In fact, *Inter-Modal* and *Firestone* are complimentary rulings that further the analysis of ERISA's remedial scheme. *Firestone* protects a broad range of ERISA claimants by conferring "participant" status on four categories of claimants: 1) any claimant who has a colorable claim that he will prevail in a suit for benefits; 2) any claimant who has a colorable claim that he will fulfill eligibility requirements in the future; 3) any claimant who has a reasonable expectation of returning to covered employment; and 4) any claimant who has a colorable claim to vested benefits. A claimant who can satisfy any one of *Firestone's* four tests, three of which do not specifically require vesting, will have standing to assert an ERISA § 510 claim.[3] *Id.*

The fourth category of *Firestone's* "participant" test (and the lower court's analysis of that category when it ruled that the non-vested plaintiffs do not have standing)

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[3] In fact, the Third Circuit found that the non-vested plaintiffs were not "participants" because they did not have a reasonable expectation of returning to covered employment and because they did not have a colorable claim to vested benefits. Had their collectively bargained recall rights not expired or been waived, the non-vested plaintiffs likely would have satisfied this prong of the *Firestone* standard and had standing to bring their ERISA § 510 claim. Similarly, the non-vested plaintiffs could not establish their inclusion in the first two *Firestone* categories since those categories apply only to current employees, not to former employees. However, had the non-vested plaintiffs been able to satisfy any of *Firestone's* other three tests, they could have asserted their ERISA § 510 claim regardless of vesting.

is not undercut by *Inter-Modal*. *Firestone*'s focus on a claimant's potential vested status is simply a method for defining the universe of potential ERISA claimants who "may become eligible" for a benefit within ERISA's definition of "participant." *Firestone*, 489 U.S. 101. The method by which a court identifies a claimant as a "participant" within the meaning of ERISA § 3(7) has no bearing on the substantive validity of the participant's ERISA claim, which the court addressed in *Inter-Modal*. *Firestone*, 489 U.S. 101; *Inter-Modal*, 520 U.S. 510. That the Third Circuit used the fourth category of the *Firestone* test to determine that the non-vested plaintiffs lack "participant" status is not inconsistent with *Inter-Modal* because standing is a threshold analysis entirely separate from the substantive analysis of the ERISA § 510 claim. *Id*. Thus, the lower court's reliance on the *Firestone* standing analysis claim does not conflict with this Court's decision in *Inter-Modal*.

III. CONCLUSION

For the foregoing reasons, Respondent Mack Trucks, Inc., respectfully requests that this Court deny the petition for a writ of certiorari.

Respectfully submitted,

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